STATE OF MICHIGAN

COURT OF APPEALS

PAUL JACK,

Plaintiff-Appellee/Cross-Appellant,

v

LOIS MARIE JACK,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
January 20, 2004

No. 245073
Wayne Circuit Court
LC No. 98-804003 DM

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Defendant appeals as of right an order granting both parties joint legal and physical custody of their minor children, and awarding both parties equal parenting time. Plaintiff cross-appeals the trial court's ruling denying his motion for sole physical custody. We affirm.

The relevant procedural history was set out by this Court in a previous opinion:

> The parties are the parents of two minor children, Erin, born on November 30, 1992, and Adam, born on June 26, 1995. The parties separated in early 1998. On February 20, 1998, a stipulated order was entered granting both temporary physical and legal custody of the children. In the January 29, 1999, judgment of divorce, the parties were granted joint legal custody, but defendant was granted sole physical custody. [*Jack v Jack*, 239 Mich App 668, 669-670; 610 NW2d 231 (2000).]

Plaintiff appealed the trial court's award of sole physical custody to defendant. *Id*. at 670. This Court determined that because a temporary custody order existed, the trial court erred in failing to determine whether an established custodial environment existed before awarding defendant sole physical custody. *Id*. This Court went on to determine that an established custodial environment existed with both parties, and remanded for the trial court to determine whether clear and convincing evidence existed that a change from joint physical custody to defendant having sole physical custody was in the best interests of the children. *Id*. at 671.

Before the hearing in the trial court after remand, plaintiff moved for sole physical custody of the minor children. Following an evidentiary hearing, the trial court determined that plaintiff did not meet his burden of proving by clear and convincing evidence that a change in

custody was in the best interests of the children. The trial court awarded the parties joint legal and physical custody of the children, as well as equal parenting time. This appeal ensued.

On appeal, defendant argues that the trial court erred in granting equal parenting time to both parties. Defendant maintains this order resulted in a modification of custody, contrary to the trial court's determination that no modification was warranted and constituted error because plaintiff did not prove by clear and convincing evidence that such a change was in the best interests of the minor children. We disagree.

We review an order regarding parenting time de novo, but will not reverse the order unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or committed a clear legal error. *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992), citing *Booth v Booth*, 194 Mich App 284; 486 NW2d 116 (1992). Parenting time is granted if it is in the best interest of the child and in a frequency, duration, and type reasonably calculated to promote strong parent-child relationships. MCL 722.27a(1). A trial court may modify or amend its previous orders for parenting time only for "proper cause shown or because of change of circumstances." *Terry v Affum (On Remand)*, 237 Mich App 522, 535; 603 NW2d 788 (1999); MCL 722.27(1)(c). When a modification of parenting time "amounts to a change in the established custodial environment, the trial court should apply the standard used for a change in custody and refuse to grant a modification unless it is persuaded by clear and convincing evidence that the change would be in the best interests of the child." *Stevens v Stevens*, 86 Mich App 258, 270; 273 NW2d 490 (1978).

We are not persuaded by defendant's argument that the trial court's grant of equal parenting time amounted to a modification of custody. The original judgment of divorce granted sole physical custody to defendant. Plaintiff was granted liberal parenting time, consisting of Friday evenings until Monday mornings, alternate Wednesday evenings until Thursday mornings, and six weeks during the summer. After remand, the trial court ordered joint physical custody to both parties and awarded equal parenting time to both parties, consisting of alternate Thursday evenings until Monday mornings, alternate Wednesday evenings until Friday mornings, and six weeks during the summer, to alternate each year. We believe the trial court's award of equal parenting time was merely reflective of the reestablished joint custody arrangement, and find no error. *Terry*, *supra* at 535.

On cross-appeal, plaintiff argues that the trial court erred in its determination that he did not prove by clear and convincing evidence that a modification of custody was in the best interests of the children. We disagree. In determining whether a modification of custody is appropriate, a trial court examines the best interest factors set out in MCL 722.23. The trial court is not required to give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances. *McCain v McCain*, 229 Mich App 123, 130-131; 580 NW2d 485 (1998). The trial court's findings with regard to each factor affecting custody should be affirmed unless the evidence clearly preponderates in the opposite direction. *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000).

Following an evidentiary hearing, the trial court determined that the parties were equal on six of the best interest factors, that four of the factors were inapplicable, and that two of the factors slightly favored plaintiff. Plaintiff contends that the evidence presented during the evidentiary hearing demonstrated that he should have been favored on all of the best interest

factors. However, he acknowledges that defendant has a good and loving relationship with the children, that the children are healthy and are provided necessary health care, that they have a stable residence, and that defendant routinely provides him with right of first refusal to care for the children when defendant required child care services.

A review of the entire record does not support plaintiff's contention that the evidence warranted a change in custody. In the instant case, the trial court properly examined "all the criteria in the ultimate light of the child[ren]'s best interests." *Heid v Aasulewski (After Remand)*, 209 Mich App 587, 596; 532 NW2d 205 (1995). The trial court's findings of fact were not against the great weight of the evidence, and the trial court's determination that a modification of custody was not warranted was not error.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage